

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH FRIEDMAN,

Plaintiff

V.

ROMEO ARANAS, et al.,

Defendants.

Case No.: 3:17-cv-00433-MMD-WGC

Order

Re: ECF No. 157

Before the court is Plaintiff's motion for leave to file document under seal. (ECF No. 157.)

Plaintiff asks that he be allowed to file his supplemental comment on Dr. DePry's report under seal because it contains sensitive, confidential medical/mental health information.

"Historically, courts have recognized a general right to inspect and copy public records and documents, including judicial records and documents." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation marks and citation omitted). "Throughout our history, the open courtroom has been a fundamental feature of the American judicial system. Basic principles have emerged to guide judicial discretion respecting public access to judicial proceedings. These principles apply as well to the determination of whether to permit access to information contained in court documents because court records often provide important, sometimes the only, bases or explanations for a court's decision." *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983)).

Documents that have been traditionally kept secret, including grand jury transcripts and warrant materials in a pre-indictment investigation, come within an exception to the general right of public access. *See Kamakana*, 447 F.3d at 1178. Otherwise, "a strong presumption in favor of

1 access is the starting point." *Id.* (internal quotation marks and citation omitted). "The presumption
2 of access is 'based on the need for federal courts, although independent—indeed, particularly
3 because they are independent—to have a measure of accountability and for the public to have
4 confidence in the administration of justice.'" *Center for Auto Safety v. Chrysler Group, LLC*, 809
5 F.3d 1092, 1096 (9th Cir. 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States*
6 *v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Ct.*,
7 *D. Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

8 There are two possible standards a party must address when it seeks to file a document
9 under seal: the compelling reasons standard or the good cause standard. *Center for Auto Safety*,
10 809 F.3d at 1096-97. Under the compelling reasons standard, "a court may seal records only when
11 it finds 'a compelling reason and articulate[s] the factual basis for its ruling, without relying on
12 hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1179). The court must
13 "'conscientiously balance[] the competing interests of the public and the party who seeks to keep
14 certain judicial records secret.'" *Id.* "What constitutes a 'compelling reason' is 'best left to the sound
15 discretion of the trial court.'" *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)).
16 "Examples include when a court record might be used to 'gratify private spite or promote public
17 scandal,' to circulate 'libelous' statements, or 'as sources of business information that might harm
18 a litigant's competitive standing.'" *Id.*

19 The good cause standard, on the other hand, is the exception to public access that has been
20 typically applied to "sealed materials attached to a discovery motion unrelated to the merits of the
21 case." *Id.* (citation omitted). "The 'good cause language comes from Rule 26(c)(1), which governs
22 the issuance of protective orders in the discovery process: The court may, for good cause, issue an
23

1 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden
2 or expense.'" *Id.*

3 The Ninth Circuit has clarified that the key in determining which standard to apply is
4 whether the documents proposed for sealing accompany a motion that is "more than tangentially
5 related to the merits of a case." *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
6 compelling reasons standard is applied. If not, the good cause standard is applied.

7 Here, Plaintiff seeks leave of court to file his supplemental comments on Dr. DePry's report
8 under seal. Dr. DePry's report has been filed under seal and is related to Plaintiff's pending motion
9 for temporary restraining order and preliminary injunction regarding his mental health care. This
10 motion requires the court to address a likelihood of success on the merits of his mental health care
11 claim; therefore, the filing is "more than tangentially related to the merits of a case," and the
12 compelling reasons standard applies.

13 This court, and others within the Ninth Circuit, have recognized that the need to protect
14 medical privacy qualifies as a "compelling reason" for sealing records. *See, e.g., San Ramon*
15 *Regional Med. Ctr., Inc. v. Principal Life Ins. Co.*, 2011 WL89931, at *n.1 (N.D. Cal. Jan. 10,
16 2011); *Abbey v. Hawaii Employers Mut. Ins. Co.*, 2010 WL4715793, at * 1-2 (D. HI. Nov. 15,
17 2010); *G. v. Hawaii*, 2010 WL 267483, at *1-2 (D.HI. June 25, 2010); *Wilkins v. Ahern*, 2010
18 WL3755654 (N.D. Cal. Sept. 24, 2010); *Lombardi v. TriWest Healthcare Alliance Corp.*, 2009
19 WL 1212170, at * 1 (D.Ariz. May 4, 2009). This is because a person's medical records contain
20 sensitive and private information about their health. While a plaintiff puts certain aspects of his
21 medical condition at issue when he files an action alleging deliberate indifference to a serious
22 medical need under the Eighth Amendment, that does not mean that the entirety of his medical
23 records filed in connection with a motion (which frequently contain records that pertain to

1 unrelated medical information) need be unnecessarily broadcast to the public. In other words, the
2 plaintiff's interest in keeping his sensitive health information confidential outweighs the public's
3 need for direct access to the medical records.

4 Here, Plaintiff's supplemental comment on Dr. DePry's report will contain sensitive
5 information concerning Plaintiff's mental health condition, records and treatment. Balancing the
6 need for the public's access to information regarding Plaintiff's medical history, treatment, and
7 condition against the need to maintain the confidentiality of Plaintiff's medical records weighs in
8 favor of sealing this document. Therefore, Plaintiff's motion (ECF No. 157) is **GRANTED** and
9 he may file his supplemental comment on Dr. DePry's report (due August 2, 2019) under seal. This
10 order will also **extend** to the sealing of Defendants' comment on Dr. DePry's report, which is also
11 to be filed by August 2, 2019.

12 **IT IS SO ORDERED.**

13 Dated: August 1, 2019.

14 

15 William G. Cobb
16 United States Magistrate Judge
17
18
19
20
21
22
23